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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,171	07/31/2000	Michael J. Matsko	8611	4793

7590

07/03/2003

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EXAMINER

SHAFFER, ERIC T

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 07/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/629,171

Applicant(s)

MATSKO ET AL.

Examiner

Eric T. Shaffer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### DETAILED ACTION

1. The following is an initial Office Action upon examination of the above-identified application on the merits. Claims 1 – 20 are pending in this application.

#### *Oath/Declaration*

2. It does not include the notary's signature, or the notary's signature is in the wrong place.

It does not identify the mailing or post office address of each inventor. A mailing or post office address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The mailing or post office address should include the ZIP Code designation. The mailing or post office address may be provided in an application data sheet or a supplemental oath or declaration. See 37 CFR 1.63(c) and 37 CFR 1.76.

#### *Claim Objections*

3. Applicants need to submit the related U.S. application numbers in lines 1 – 5 of page 1 of the specification.

#### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1 - 20** are rejected under 35 U.S.C. 102(b) as being anticipated by Frey et al (US 5,557,513).

As per claims 1, 13 and 19, Frey et al discloses a computer implemented method of associating a retail performance metric record with an event causing the retail performance metric, the retail performance metric record being a function of the retail performance metric type and the time elapsed waiting for and receiving an input, comprising the steps of:

receiving input indicative of an occurring event (column 4, lines 48 - 53, "when a person

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or object passes beneath these sensors, the system measures the height, speed, and length of the person or object and generates signals representing a time-dependent height profile of the person or object as the person or object moves past the sensor”);

recording an entry record indicative of the input received (column 4, lines 63 - 67, “a shopper who is a potential buyer enters or exits through a doorway monitored by the recognition system 12, the recognition system records the time of the event and stores that information in an internal memory buffer so that the information is accessible to the computer”)

recording a retail performance metric record including the retail performance metric and the retail performance metric type (column 6, lines 2 - 3, “The POS system registers each transaction at the checkout and records the time of the transaction”).

associating the retail performance metric record with the entry record (column 4, lines 59 - 61, “the system determines whether a particular person entering the store is a potential buyer as opposed, for example, to a small child”).

Frey et al does not explicitly disclose the feature of determining the time type category of the input received. However, this feature is deemed to be inherent to the Frey et al system, in order to differentiate the estimated shopping time in line 44 - 45, column 3 from the time of the transaction in line 3 in column 6. The Frey et al invention would be inoperative if some typing means was not available to distinguish between the two types of time.

6. As per claims 2, 3, 8 and 9 Frey et al does not specifically disclose the system wherein the memory further includes sequences of instructions which, when executed by the processor, cause the processor to include an entry identifier field in the entry record and to associate the retail performance metric record with the entry record by including the identification field value

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of the entry record in the retail performance metric record. However, this feature is deemed to be inherent to the Frey et al device as lines 2 - 3, column 6 show “the POS system registers each transaction at the checkout and records the time of the transaction”. Since each register can only service one customer at a given time, and since each transaction is registered and recorded, the combination of register and time serves as a unique entry identifier field for the given transaction, while the recording of each transaction represents the performance metric.

7. As per claims 4, 10, 14 and 17, Frey et al does not explicitly disclose the sequence of processor executed instructions and the associating step comprises adding a pointer to the retail performance metric record, wherein the pointer references the entry record. However, this feature is deemed to be inherent to the Frey et al device as lines 2 – 3 of column 5 show pointers in use in the system that “allows the computer to retrieve the shopper entry time data from the recognition system”. Pointers are, by definition, memory addresses that indicate where data, such as entry time data, are stored within the system. If these addresses did not exist, the data retrieval functionality of the Frey et al device would be inoperative.

8. As per claims 5, 11, 15 and 18, Frey et al does not explicitly disclose the method and system wherein the memory further includes sequences of instructions which, when executed by the processor, cause the processor to associate the step comprises adding a link to the retail performance metric record, wherein the link references the entry record. However, this feature is deemed to be inherent to the Frey et al device as lines 2 – 3 of column 5 show links in use in the system that “allows the computer to retrieve the shopper entry time data from the recognition system”. Links are, by definition, are references or pointers to data in another record memory

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location. If these links did not exist, the data retrieval functionality of the Frey et al device would be inoperative.

9. As per claims 6 and 12, Frey et al discloses the method and system wherein the entry record after addition of the retail performance metric record comprises an entry identifier field, an entry type field, a time of entry field, and an elapsed time field (column 3, lines 44 – 47, “The software of the present invention combines the shopper entry data, items purchased and estimated shopping times, and exit time data”).

10. As per claims 7, 16 and 20, Frey et al discloses a computer implemented system for associating a retail performance metric record with an entry causing the retail performance metric, the retail performance metric record being a function of the retail performance metric type and the time elapsed waiting for and receiving the input, comprising:

a processor for receiving and transmitting data (column 4, lines 53 – 55, “signals are transmitted to a signal processor, and from there to a central processing unit which processes the signals and generates data”);

a memory coupled to the processor, the memory having stored therein sequences of instructions which, when executed by the processor, cause the processor to receive input indicative of an occurring event, record an entry record indicative of the input received, record a retail performance metric record, and associate the retail performance metric record with the entry record (column 6, lines 2 – 6, “the POS system registers each transaction at the checkout and records the time of the transaction. A “transaction” is represented by a single buyer checking out through a checkout lane”).

### ***Conclusion***

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11. No claims were allowed and all claims were rejected.
12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Schlesinger (US 3,808,410) – Traffic measurement in a retail store.  
Frey et al (US 5,138,638) – Traffic measurement in a retail store.  
Shahbaz et al. (US 4,528,679) – Traffic measurement in a common carrier.  
Frey et al (US 5,305,390) – Object recognition and counting.  
Katsof et al (US 4,700,295) – Traffic measurement in a bank.  
Dextraze et al. (US 5,541,835) – Traffic measurement in a bank.  
Nelson et al. (US 5,390,107) – Traffic measurement in a retail store.  
www.retailsystems.com as archived on January 17, 1999.  
www.acnielsen.com as archived on October 1, 1999.  
Microsoft Computer Dictionary, 1994, pp. 240, 308 – definition of 'pointer' and 'link'.  
The Computer Glossary, 1995, pp. 224, 305 – definition of 'pointer' and 'link'.

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric Shaffer whose telephone number is (703) 305-5283. The Examiner can normally be reached on Monday-Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 305-3900.

Any response to this action should be mailed to:  
Commissioner of Patents and Trademarks  
Washington D.C. 20231

Or faxed to:

(703) 746-7238 [After Final communications, labeled "Box AF"]  
(703) 305-7687 [Official communications]  
(703) 706-9124 [Informal/Draft communications, labeled  
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2121 Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

ETS

June 11, 2003

  
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